United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

579

BRIEF FOR THE APPELLANT

In The

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22731

(Criminal No. 569-68)

UNITED STATES OF AMERICA

v.

HERSCHEL W. BOHANNON,

Appellant.

On Appeal From the United States District Court for the District of Columbia

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Whether the District Court erred in failing to find as a matter of law that the defendant did not use excessive force in his self-defense after attack by the deceased.

2. Whether the boots (Government Exh. No. 10) with which the deceased attacked the defendant on the night of the homicide was such a dangerous weapon as to justify the defendant's shooting the deceased in self-defense.

3. Whether the District Court erred in failing to charge the jury that even if the defendant originally provoked the conflict, he withdrew from it in good faith and clearly announced his desire for peace by his offer of apology to both the decedent and his wife.

4. Whether the defendant was denied the due process of law in being sentenced by the trial court who relied inter alia on the presentence report, copies of which were never shown to the defendant or his counsel at the time of sentencing.

This case has never been before this Court before.

In the

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22731

Herschel W. Bohannon, Appellant

On Appeal From the United States District Court for the District of Columbia

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BRIEF FOR THE APPELLANTS

REFERENCES TO RULINGS

On January 10, 1969, Judge Pratt sentenced the defendant to a term of 4 to 12 years and set bond at $5,000. On February 3, 1969, Judge Pratt issued an order denying motion for release on personal bond pending appeal and set forth a statement of his reasons pursuant to Rule 9(b), Federal Rules of Appellate Procedure, why he did not grant this motion.

On May 7, 1969, this Court denied the appellant's motion for release on personal cognizance.

STATEMENT OF THE CASE

This is an appeal from a conviction by the jury of the defendant, Herschel W. Bohannon, hereinafter referred to as Mr. Bohannon, of the offense of manslaughter for the death of Timothy Coburn, hereinafter referred to as Mr. Coburn. The District Court, Pratt, J., relying on the evidence at trial and the presentence report, sentenced Mr. Bohannon to a term of 4 to 12 years.

Accepting the Government's evidence as true -- except where otherwise noted -- the facts in this case are as follows:

Richard A. Weidman tossed a beer party about once a month at his apartment, at which his friends and new acquaintances would "have some fun, drink some beer, drink some drinks"(Tr. 65). He tossed one of these parties in the early morning hours of Sunday, January 28, 1968, at his apartment in the District of Columbia, to which he invited approximately 30 people (Tr. 35). Among the

invited guests were Mr. Coburn and his wife, Diana (Tr. 41) and Miss Dorothea Stefen, (Dottie) Mr. Bohannon's girl friend (Tr. 47). Mr. Weidman told Dottie to bring a friend with her to the party and she brought Mr. Bohannon (Tr. 47-48).

Dottie and Mr. Bohannon were the first guests to arrive at the party. The next guests arrived about 45 minutes later, and the party did not really begin to get going until 1 o'clock in the morning (Tr. 64). Mr. Weidman characterized the party -- until the argument -- as "a real nice party,' where the people were dancing and "everybody was having a nice time" in a "very friendly atmosphere" (Tr. 63).

Mr. Coburn had invited a friend, Andre Francois, to join him and his wife at the party (Tr. 136). Before going to the party, Mr. Coburn picked his wife up at the restaurant (The Southeast Beehive) where she worked (Tr. 131, 147), had a beer (Tr. 147), and stopped at the Burger Chef to get something to eat (Tr. 132, 147). After they arrived at Mr. Weidman's apartment house, Mr. Coburn got into an argument with a man standing at the front of

the building. Mr. Coburn struck the man with his fist (Tr. 130, 148-150). They then went upstairs to Mr. Weidman's second floor apartment about 2:00 A.M. (Tr. 121). Mr. Weidman greeted them and "got them a drink" (Tr. 62).

Mrs. Coburn went into the kitchen to see if anyone was there (Tr. 123). When she stepped out, Bohannon grabbed her "in my privates" "right hard" (Tr. 123). In response to questioning by the Assistant U.S. Attorney, Mrs. Coburn related the following sequence of events (Tr. 124-125):

> A Well, I went and told my husband, and he went over to the colored guy and told him to leave me alone, that I was his wife. And I told him he was talking to the wrong guy.
>
> Q Who did you tell this to, now?
>
> ****
>
> A So I told him he was talking to the wrong guy. And it was him (indicating).
>
> So they had a few words. Then he turned around and apologized to the other guy, said he was sorry, that, you know, he jumped on him.
>
> And then they were having a few words, Bohannon and my husband. So his girl friend came over, and she was talking to me.
>
> Q Do you know her name?
>
> A I called her Dollie.

Q All right. While she was talking to you, what, if anything, happened that you saw?

A Well, they were in there having a few words and fighting, and she was talking to me.

She said, "Well, he's my boy friend, just because he's colored doesn't make any difference."

I said it doesn't make any difference, even if he was a white guy, he shouldn't put his hand on me.

So they were fighting, and people had gathered in front of the kitchen door.

Q Take your time.

A So then I heard a shot.

Q Where were you at the time you heard the shot?

A In front of the T/V.

Mr. Bohannon testified that he had "inadvertently" touched Mrs. Coburn (Tr. 168). When informed of her annoyance, he asked his girl friend, Miss Stefen, to apologize to Mrs. Coburn (Tr. 169). He then went on to say:

> A Well, Dot got up and she went out the room. And a few minutes later a fellow came through the door and he said to another fellow, "If you do that again, I'm going to punch you in the face." And the fellow said, "Do what?" At which time I interjected, I said, "Hey, hey, hey, he didn't do that." And he said, "Oh, you did it; what did you do it for?" And I said,

"It was an accident, I didn't mean to do anything; I sent my girl friend to apologize to your wife."

And his attitude was belligerent. At the time I was laying down on the, I guess it's a long couch (indicating), and I was lying down, and I saw he was getting ready to hit me, so at that point I said, "If it will help anything, I will apologize to your wife, if it will help your wife."

And this didn't seem to have any effect on him.

So I got up off the couch, and I told him, "Well, I'll go apologize to her, myself."

And as I started to walk past him, in fact I was past him, I would say, I was struck several blows on my body, head and body.

The fight between Mr. Bohannon and Mr. Coburn then began. Mr. Bohannon was five feet ten inches tall and weighed 131 or 132 pounds (Tr. 170-171). Mr. Coburn was six feet one inch tall, weighed 205 pounds (Tr. 128-155), and was wearing cowboy boots (Tr. 128, Government's Exh. 10). As the fight ensued, the two men were wrestling and knocked over several chairs on the floor (Tr. 145, 139). Mr. Coburn was standing over Mr. Bohannon, who was then lying on the floor (Tr. 139). Mr. Bohannon, while lying on the floor, kicked Mr. Coburn (Tr. 139). Mr. Coburn, wearing the cowboy boots, "kicked him back in the face

standing up" (Tr. 139). At that time, Mr. Bohannan had his back to the wall, his hands over his face, protecting his face from Mr Coburn's feet (Tr. 146). Mr. Francois, Mr. Coburn's friend, explained (Tr. 140), "Well, when this man got kicked he went like this (indicating), and then went down to his stomach, like that. And I figured the fight was over by then, so I turned around, and the second I turned around I heard a shot." (See also Tr. 44.) As a result of the fight, Mr. Bohannon had a bruise over his right eye, a bruise inside his lower lip, a bruise to the upper right eyelid and a laceration in the right rear of his skull (Tr. 108).

Mr. Bohannon testified that while he was being rapidly kicked, no one attempted to come to his assistance or to restrain Mr. Coburn (Tr. 173). Mr. Bohannon "was scared to death" (Tr. 173). Mr. Bohannon admitted that he pulled out a pistol and shot Mr. Coburn "because he was getting ready to kick me again, sir" (Tr. 171). 1/

1/ Mr. Bohannon had been regularly carrying a loaded gun since late September or early October 1967 in the ordinary course of his travels (Tr. 175-177).

After the first shot was fired, Mr. Coburn started running out of the kitchen into the living room and Mr. Bohannon shot him again from the kitchen (Tr. 40, 127, 140). Mr. Coburn ran into the hallway (Tr. 50, 140, 141, 143). Mrs. Coburn testified, "my husband came running through the living room, and Bohannon, you know, was chasing after him; and the girl Dollie (sic) grabbed him and she was yelling to him, you know, to stop shooting. And she grabbed him, and he knocked her down. He (Bohannon) chased him (Coburn) down the hall, shooting and then beating him with the gun" (Tr. 126, 50, 140-143). While everybody else ran away, Mr. Francois testified that he "saw Timmie (Coburn) laying helpless and this man beating him. So I looked around and the closest thing to me was a fish bowl that was sitting on the T/V; and I came behind this man over there and hit up side the head with the fish bowl, tried to get him off Timmie." Mr. Francois concluded by stating, "then he started turning around toward me and took off, ran down the street and outside in the street" (Tr. 141).

Mr. Coburn died later that night of hemorrhagic

shock (Tr. 128, 155). The coroner testified that while he did not know from an examination of the corpse which was the first wound, he determined that the fatal wound was "the bullet wound which entered the left anterior aspect of the body and coursed through the liver, through the diaphragm, and through the lung and out the right chest wall was a fatal wound" (Tr. 158). This testimony, together with that of Mr. Francois, that the first gunshot was in the stomach (Tr. 144) makes it logically deducible that the fatal gunshot was the result of the first bullet wound.

Mr. Bohannon was indicted by the grand jury on two counts. The first count charged him with the second degree murder of Timothy Coburn (Tr. 203). The jury found the defendant not guilty on the second count and guilty of the lesser included offense of manslaughter on the first count of the indictment (Tr. 228).

ARGUMENT

In our brief we will show first that the District Court erred in failing to find as a matter of law that Mr. Bohannon did not use excessive force in his self-defense after being repeatedly kicked with a sharp-heeled boot and put in fear of his life. We will also show that the charge to the jury by the District Court failed to set forth the correct standard to be applied when the defendant in this homicide admittedly shot the deceased, but did so because of self-defense. We will then set forth in our brief that if this Court agrees that the defendant was correctly found guilty of manslaughter, the trial court did not provide him with the full benefit of counsel by not permitting the defendant or his counsel to see any parts of the presentence report upon which the District Court relied in sentencing the defendant.

I. THE DISTRICT COURT ERRED IN FAILING TO FIND AS A MATTER OF LAW THAT MR. BOHANNON DID NOT USE EXCESSIVE FORCE IN HIS SELF-DEFENSE AFTER BEING REPEATEDLY KICKED WITH THE SHARP-HEELED BOOT AND PUT IN FEAR OF HIS LIFE.

1. The evidence is clear that the defendant, Mr. Bohannon, did not use excessive force in his self-defense as he lay on the floor and was repeatedly kicked by Mr. Coburn.

Mr. Bohannon, five feet ten inches tall and weighing approximately 131-132 pounds, was lying on the floor as he was being pummeled and kicked by Mr. Coburn, six feet one inch tall, weighing 205 pounds and standing over him with sharp-heeled cowboy boots, supra. And the evidence similarly demonstrates that Mr. Coburn was not a peaceable individual, but one who, minutes prior to this fatal altercation, had had harsh words and struck another individual with his fist as he was coming to the party (Tr. 130, 148). Indeed, not only does the evidence show that Mr. Bohannon was being severely injured in the fight (Tr. 108), but Mr. Francois, a Government witness and Mr. Coburn's friend, admitted that the defendant had his back to the wall, his hands over his face because Mr. Coburn's kicking hurt Mr. Bohannon (Tr. 146, 140). See also Tr. 170. And the record plainly demonstrates that not one among the approximately 30 guests at the party attempted to restrain Mr. Coburn or come to Mr. Bohannon's aid as Mr. Bohannon lay on the floor being kicked with a sharp-heeled boot (Government Exh. No. 10), which is plainly a deadly weapon (Tr. 173). At that moment, "scared to death," Mr. Bohannon

pulled out a pistol and shot Mr. Coburn, "because he was getting ready to kick me again." In these circumstances, the principles of self-defense, set forth by this Court in Inge v. United States, 356 F.2d 345, 123 U.S. App. D.C. 6 (1966) are plainly applicable to this case and would similarly justify an outright acquittal on the grounds of self-defense. In Inge, this Court stated (356 F.2d at 348):

> It is reasonable, as the trial court instructed the jury, to use a deadly weapon in defense against an attack with one, though in general the defender must use the weapon in a reasonable manner, i.e., only to the extent he reasonably thinks is required to save his own life or to avert serious bodily harm. However, the claim of self-defense is not necessarily defeated if, for example, more knife blows than would have seemed necessary in cold blood are struck in the heat of passion generated by the unsought altercation. A belief which may be unreasonable in cold blood may be actually and reasonably entertained in the heat of passion. "/I/f the last shot was intentional and may seem to have been unnecessary when considered in cold blood, the defendant would not necessarily lose his immunity if it followed close upon the others while the heat of the conflict was one, and if the defendant believed that he was fighting for his life." Brown v. United States, 256 U.S. 335, 344, 41 S.Ct. 501, 502, 64 L.Ed. 961 (1921).

2. As in Inge, supra, the charge of the District Court was prejudicial because the Court did not make it clear that the defense of self-defense was applicable -- even if

the defendant fired more shots and continued to battle in the heat of passion even after the absolute necessity had passed. Thus, while the trial court in its original charge did state "that the claim to self-defense is not defeated, for example, more shots than would have seemed necessary in cold blood are fired in the heat of passion generated by the unsought altercation" (Tr. 212). The trial court did not point this out when he responded to the jury's request for clarification between manslaughter and self-defense (Tr. 218). In his clarification, the court merely stated (Tr. 224):

> However, if you should find that the deceased herein was the aggressor and that the defendant was justified in using force in self-defense, the defendant would not be entitled to use any greater force than appeared reasonably necessary under these circumstances, such as continuing to use force after the deceased stopped fighting, and the use of such excessive force would not be justified on the ground of self-defense.

From this charge, the jury may well have concluded that Mr. Bohannon had lost his right to claim self-defense by the fact that in the heat of passion he fired four shots and continued to battle with the deceased. Thus, the charge is plainly prejudicial.

3. While the defendant, Mr. Bohannon, was five feet ten inches tall, weighing 131 pounds, he was battling the deceased, a man six feet 1 inch tall, weighing 205 pounds. As the defendant was lying on the floor of the kitchen, he was being repeatedly kicked by a much larger man wearing sharp-heeled cowboy boots. The District Court in its charge, apparently ignored the fact that the boots were as dangerous a weapon as a pistol. Indeed, there is no need for citation of authority to show that a sharp-heeled cowboy boot (Government Exh. No. 10) is a dangerous and deadly weapon. But the court in its charge to the jury ignored this fact and specifically stated that "obviously, a .38 caliber revolver is a dangerous weapon" (Tr. 209). For this reason also, the judgment of conviction requires reversal.

4. There is still another reason why the judgment should be reversed and a new trial ordered. The court in its charge of self-defense (Tr. 210-212) stated that "generally this defense is not available to persons engaged in mutual combat. They are wrong-doers, and the defense is not available to either person. Generally, self-defense

may not be claimed by one who leaves a safe place, /arms/ on himself and deliberately places himself in a position where he has reason to believe that his presence will provoke trouble." To this extent, the charge is correct.

However, the District Court omitted from this charge the very important exception applicable to the facts of this case, that even though Mr. Bohannon may have provoked the conflict by his "inadvertent" touching of Mrs. Coburn, he had a right to withdraw from the fray. And if the jury believed that he had in good faith withdrawn and was thereafter pursued by the deceased, he was justified in killing the deceased if necessary to save his own life. See Harris v. United States, 364 F 2d 701, 702, 124 U.S. App. D.C. 308 (1966); Parker v. United States, 158 F.2d 185, 186, 81 U.S. App. D.C. 282 (1946), certiorari denied, 330 U.S. 829; Frady v. United States, 348 F 2d 84, 105 (concurring opinion) 121 U.S. App. D.C. 78, certiorari denied 382 U.S. 909. For as was pointed out by Mr. Justice Harlan in Rowe v. United States, "the question of the good or bad faith of the retreating party is of the utmost importance, and should generally be submitted to the jury in connection with the

fact of retreat itself, especially where there is any room for conflicting inference on this point from the evidence." 164 U.S. 546, 556, 17 S.Ct. 172, 174 (1896).

This was especially true in the case at bar. Mr. Bohannon admitted that he had "inadvertently" touched Mrs. Coburn (Tr. 168), but he stated that upon being informed of this fact, he sent Dottie to apologize (Tr. 169) and that he subsequently apologized to Mr. Coburn, the deceased, who refused to accept the apology. Thus, if the jury had been informed that if they believed Mr. Bohannon's good faith in apologizing, they could find that Mr. Bohannon had ceased to be the aggressor and was justified in killing the deceased, who had attacked him.

II. THE DEFENDANT WAS DENIED DUE PROCESS OF LAW IN BEING SENTENCED BY THE TRIAL COURT, WHO RELIED, INTER ALIA, ON THE PRESENTENCE REPORT OF THE PROBATION OFFICER COPIES OF WHICH REPORT WERE NEVER SHOWN TO THE DEFENDANT OR HIS COUNSEL AT THE TIME OF SENTENCING.

Should the Court agree that the defendant should have been acquitted as a matter of law, or that the trial court committed reversible error in its charge, this Court of course will not reach this question. In sentencing Mr. Bohannon to a term of 4 to 12 years, the trial court relied, inter alia, on the presentence report. Neither

Mr. Bohannon nor his trial counsel had ever seen a copy of the presentence report. 1/

It is our contention that the failure to disclose any of the information in the presentence report on which the court relies in sentencing a criminal defendant, is a constitutional deprivation of due process of law. We believe that this Court should follow the reasoning of the Fourth Circuit in Baker v. United States, 388 F.2d 931, C.A. 4 (1968) and hold that there are items in the presentencing report of which the defendant is rightfully entitled to be advised. The Fourth Circuit pointed out (388 F.2d at 933) that "the sentencing court should apprise him /the defendant/, orally from the bench, of at least such pivotal matters of public record as the convictions and charges of crime, the date and place, attributed to him in the report. As this may be done without handing the defendant or counsel the report, the

1/ No request was apparently made by counsel to see this report, but even if such a request had been made, under the custom of the court, the request would have been denied. We, the court-appointed attorneys on this appeal, were informed by Judge Pratt's secretary, Mrs. McTiernan, that it is his practice that these reports are never seen by anyone but the Court.

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procedure could not lead to a destruction of the probation officer's sources of information."

In Gadsden v. United States, 223 F.2d 627, 630, 96 U.S. App. D.C. 162 (1955), this Court recognized:

> The right to effective assistance of counsel at the sentencing stage of the proceedings is guaranteed by the Constitution. There is then a real need for counsel ... Then is the opportunity afforded for presentation to the Court of facts in extenuation of the offense, or an explanation of the defendant's conduct; to correct any errors or mistakes in reports of the defendant's present record; and, in short, to appeal to the equity of the court."

Despite this ruling by this Court and recent amendments to the Federal Rules of Criminal Procedure, it is the practice of Judge Pratt's court and, we believe, among the other District judges sitting in the District of Columbia, that no part of the presentence reports are disclosed to the defendant or his counsel. Thus, in United States v. Durham, 181 F.Supp. 503 (D.D.C. 1960), the District Court denied a motion for a defendant to inspect the probation officer's report of the presentence investigation. A petition for a writ of certiorari was denied (364 U.S. 854 (1960)).

This decision in 1960 was in accord with the

trend of decisions then in effect. But since that time, the rules of criminal procedure for the United States District Courts have been amended to provide as follows:

> (c) Presentence Investigation.
> * * * * *
> (2) Report. The report of the presentence investigation shall contain any prior criminal record of the defendant and such information about his characteristics, his financial condition and the circumstances affecting his behavior as may be helpful in imposing sentence or in granting probation or in the correctional treatment of the defendant, and such other information as may be required by the court. The court before imposing sentence may disclose to the defendant or his counsel all or part of the material contained in the report of the presentence investigation and afford an opportunity to the defendant or his counsel to comment thereon. Any material disclosed to the defendant or his counsel shall also be disclosed to the attorney for the government.
> * * * * * *

And the Advisory Committee noted the heated controversy as to whether as a matter of policy the defendant should be accorded some opportunity to see and refute allegations made in the reports. The Advisory Committee, recognizing the controversy and the fact that it is only a minority of judges that permit disclosure of presentence reports while "most deny it," concluded that the amendment goes no further than to make it clear that courts may

disclose all or part of the presentence report to the defendant or to his counsel. The Advisory Committee on Rule 32 concluded by stating:

> It is hoped that courts will make increasing use of their discretion to disclose so that defendants generally may be given full opportunity to rebut or explain facts in presentence reports which will be material factors in determining sentences.
> (See Notes on Advisory Committee on Rules. See Reprinted 18 U.S.C.A. Federal Rules of Criminal Procedure, Rules to End, 1969 Pocket Part, pages 5-6.)

Since these amendments to Rule 32(c), five U.S. Courts of Appeals have considered the question of the right to examine the presentence report. Three, the Second, Fourth and Ninth Circuits, have indicated that some disclosure should be made available. Two, the Third and the Fifth Circuits, have held -- without much discussion -- that the disclosure of the presentence report was within the discretion of the trial judge. United States v. Weiner, 376 F.2d 42, C.A. 3 (1967); Roeth v. United States, 380 F.2d 755, 757, C.A. 5 (1967), certiorai denied, 397 U.S. 1015. The Second Circuit in United States v. Fischer, 381 F.2d 509, C.A. 2, 1967, refused to require complete

disclosure of the presentencing report. That court, however, went on to say that the authority to disclose material under Rule 32(c) should not be"exercised conservatively and in a niggardly fashion," but "on the contrary, the administration of justice would be improved by a liberal and generous use of the power to disclose" (381 F.2d at 512).

The Ninth Circuit in Verdugo v. United States, 402 F2d 599, 609 (1968) did not pass on the contention that a convicted criminal's right to make a statement in his own behalf and to present any information in mitigation of punishment, "was of little value without knowledge of the allegations in the presentence report and that his right to the effective aid of counsel at sentencing was equally empty, since counsel's ignorance of these allegations precluded him from dealing with them directly and specifically." The court nonetheless noted that "the appellant's argument has force; and the authorities provide no ready answer." Judge Browning in an extensive concurring opinion, 402 F.2d 613-617, said that "due process may require some form of disclosure of the

presentence report to the defense,"(402 F.2d at 613). And the Fourth Circuit in Baker v. United States, 388 F.2d 931 (1968), vacated a sentence of the District Court where the trial court had refused to order disclosure before sentence of the contents of the probation officer's presentence report, setting forth certain minimum disclosure requirements. Judge Winters in his concurring opinion therein, 388 F.2d 934-935, was of the opinion that "a presentence report should be fully disclosed to a defendant, through his counsel, or to the defendant, himself, if he is unrepresented, prior to sentencing, except for the confidential recommendation of the probation officer to the sentencing judge and except where there is tangible good cause to withhold exhibition of a portion of the report." In support of his position, Judge Winter pointed to the experiences of the District judges in the District of Maryland (388 F.2d 931-935):

> ... In the District of Maryland, disclosure of presentence reports, in accordance with my views, has been the practice for over ten years. The experience of Maryland belies the fears that, as general propositions, sources of confidential information dry up, probation officers are deprived of trustworthy

> and logical informants, and the object of the report is defeated, if the contents of reports are disclosed. Of course, these dangers may be present in a particular case if full disclosure is made, but the decision to disclose or withhold ought to be made in that case on the basis of the facts peculiar to it and not on the basis of general propositions which may have no valid application in the particular context.

We submit that the reasoning of the Fourth Circuit should be followed by the Federal District courts sitting in the District of Columbia. Certainly, the standard applied by the Federal courts in the neighboring state of Maryland should be no different than that applied in the District. And where, as we have been informed, the District courts for the District of Columbia as a practice make no disclosure of any part of the presentence report to the defendant or his counsel. That standard should be changed and some disclosure made in accordance with the standard set forth in the Baker case, supra, in order that the sentencing procedure be meaningful.

CONCLUSION

For the foregoing reasons, the judgment of conviction should be reversed and the defendant acquitted. If this Court should disagree as to conviction, the sentence of the

District Court should be vacated with directions to resentence the defendant after he and his counsel have had the opportunity to examine and refute, if necessary, materials in the presentence report.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that 2 copies of the foregoing Brief for the Appellant were served upon Thomas Flannery, Esquire, U.S. Attorney, Washington, D.C., and Herschel W. Bohannon, Box 25, Lorton, Virginia, on the 9th day of June, 1969, by first class mail, postage prepaid.

Jack H. Weiner
Court Appointed Attorney
for Appellant